

Statutes Pertaining to the Foster Care Review Board

Foster Care Review Act

Section 43-1300

Article Analysis

Cross References:

Children committed to the department, see Chapter 43, article 9.

~ Reissue Revised Statutes of Nebraska

Section 43-1301

Terms, defined.

For purposes of the Foster Care Review Act, unless the context otherwise requires:

(1) Local board shall mean a local foster care review board created pursuant to section 43-1304;

(2) State board shall mean the State Foster Care Review Board created pursuant to section 43-1302;

(3) Foster care facility shall mean any foster home, group home, child care facility, public agency, private agency, or any other person or entity receiving and caring for foster children;

(4) Foster care placements shall mean all placements of juveniles as described in subdivision (3)(b) of section 43-247, placements of neglected, dependent, or delinquent children, including those made directly by parents or by third parties, and placements of children who have been voluntarily relinquished pursuant to section 43-106.01 to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;

(5) Person or court in charge of the child shall mean (a) the Department of Health and Human Services, an association, or an individual who has been made the guardian of a neglected, dependent, or delinquent child by the court and has the responsibility of the care of the child and has the authority by and with the assent of the court to place such a child in a suitable family home or institution or has been entrusted with the care of the child by a voluntary placement made by a parent or legal guardian, (b) the court which has jurisdiction over the child, or (c) the entity having jurisdiction over the child pursuant to the Nebraska Indian Child Welfare Act;

(6) Voluntary placement shall mean the placement by a parent or legal guardian who relinquishes the possession and care of a child to a third party, individual, or agency;

(7) Family unit shall mean the social unit consisting of the foster child and the parent or parents or any person in the relationship of a parent, including a grandparent, and any siblings with whom the foster child legally resided prior to placement in foster care;

(8) Child-caring agency shall have the definition found in section 71-1902; and

(9) Child-placing agency shall have the definition found in section 71-1902.

Source:

Laws 1982, LB 714, § 1

Laws 1985, LB 255, § 40

Laws 1985, LB 447, § 36

Laws 1987, LB 239, § 1

Laws 1990, LB 1222, § 4

Laws 1996, LB 1044, § 194

Laws 1997, LB 307, § 75

Cross References:

Nebraska Indian Child Welfare Act, see section 43-1501.

~ Reissue Revised Statutes of Nebraska

Section 43-1301.01

Entering foster care; determination of time.

For the purpose of determining the timing of review hearings, permanency hearings, and other requirements under the Foster Care Review Act, a child is deemed to have entered foster care on the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is sixty days after the date on which the child is removed from the home.

Source:

Laws 1998, LB 1041, § 35

~ Reissue Revised Statutes of Nebraska

Section 43-1302

State Foster Care Review Board; established; members; terms; expenses.

(1) (a) Until January 1, 2006, the State Foster Care Review Board shall be comprised of nine members to be appointed by the Governor, subject to confirmation by a majority of the members elected to the Legislature. At least one member shall be an attorney with legal expertise in child welfare. Two members shall be from each of the three congressional districts as they existed on January 1, 1982. In addition to the six members representative of the congressional districts, three members shall be appointed by the Governor from a group consisting of all the chairpersons of the local boards, and one such chairperson shall be appointed from each such congressional district. The appointment of a member of a local board to the state board shall not create a vacancy on

the local board. Members other than those appointed from the group consisting of all the chairpersons of the local boards shall be appointed to three-year terms, and those members appointed from the group consisting of all the chairpersons of local boards shall be appointed to two-year terms. No person shall serve on the state board for more than six consecutive years. No person employed by a child-caring agency, a child-placing agency, or a court shall be appointed to the state board.

(b) On and after January 1, 2006, the State Foster Care Review Board shall be comprised of eleven members appointed by the Governor with the approval of a majority of the members elected to the Legislature, consisting of: Three members of local foster care review boards, one from each congressional district; one practitioner of pediatric medicine, licensed under the Uniform Licensing Law; one practitioner of child clinical psychology, licensed under the Uniform Licensing Law; one social worker certified under the Uniform Licensing Law, with expertise in the area of child welfare; one attorney who is or has been a guardian ad litem; one representative of a statewide child advocacy group; one director of a child advocacy center; one director of a court appointed special advocate program; and one member of the public who has a background in business or finance.

The terms of members appointed pursuant to this subdivision shall be three years, except that of the initial members of the state board, one-third shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. No person appointed by the Governor to the state board shall serve more than two consecutive three-year terms. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified. Members serving on the state board on December 31, 2005, shall continue in office until the members appointed under this subdivision take office. The members of the state board shall, to the extent possible, represent the three congressional districts equally.

(2) The state board shall select a chairperson, vice-chairperson, and such other officers as the state board deems necessary. Members of the state board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The state board shall employ or contract for services from such persons as are necessary to aid it in carrying out its duties.

Source:

Laws 1982, LB 714, § 2

Laws 1987, LB 239, § 2

Laws 1990, LB 1222, § 5

Laws 2005, LB 761, § 1

Effective date September 4, 2005.

Cross References:

Uniform Licensing Law, see section 71-101.

Section 43-1303***State board; meetings; registry; reports required; rules and regulations; visitation of facilities.***

(1) The state board shall meet at least twice per year. The state board shall establish a statewide register of all foster care placements occurring within the state, and there shall be a monthly report made to the state board registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the state board in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such monthly report shall consist of identifying information, placement information, and the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312. The department and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

(a) Child identification information, including name, social security number, date of birth, gender, race, and religion;

(b) Identification information for parents and stepparents, including name, social security number, address, and status of parental rights;

(c) Placement information, including initial placement date, current placement date, and the name and address of the foster care provider;

(d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;

(e) Agency or other entity having custody of the child;

(f) Case worker; and

(g) Permanency Plan Objective.

(2) The state board shall review the activities of local boards and may adopt and promulgate its own rules and regulations. Such rules and regulations shall provide for the following:

(a) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;

(b) Development of procedures for local boards;

(c) Establishment of a central record-keeping facility for all local board files, including individual case reviews;

(d) Accumulation of data and the making of annual reports on children in foster care. Such reports shall include (i) personal data on length of time in foster care, (ii) number of

placements, (iii) frequency and results of court review, and (iv) number of children supervised by the foster care programs in the state annually;

(e) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and

(f) Manner in which the state board shall determine the appropriateness of requesting a review hearing as provided for in section 43-1313.

(3) The state board, upon completion of a review of local board activities, shall report and make recommendations to the department and county welfare offices. Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsection (2) of this section and the annual evaluation of such data. In addition the state board shall provide copies of such reports and recommendations to each court having the authority to make foster care placements. The state board may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met.

Source:

Laws 1982, LB 714, § 3

Laws 1990, LB 1222, § 6

Laws 1996, LB 1044, § 195

Laws 1998, LB 1041, § 36

Laws 1999, LB 240, § 1

~ Reissue Revised Statutes of Nebraska

Section 43-1304

Local foster care review boards; established; members.

The state board shall establish local foster care review boards for the review of cases of children in foster care placement. The state board shall select members to serve on local boards from a list of applications submitted to the state board. Each local board shall consist of not less than four and not more than ten members. The members of the board shall reasonably represent the various social, economic, racial, and ethnic groups of the county or counties from which its members may be appointed. A person employed by the state board, the Department of Health and Human Services, a child-caring agency, a child-placing agency, or a court shall not be appointed to a local board. A list of the members of each local board shall be sent to the department.

Source:

Laws 1982, LB 714, § 4

Laws 1987, LB 239, § 3

Laws 1996, LB 1044, § 196

Laws 1999, LB 240, § 2

~ Reissue Revised Statutes of Nebraska

Section 43-1305***Local board; terms; vacancy.***

All local board members shall be appointed for terms of three years. If a vacancy occurs on a local board, the state board shall appoint another person to serve the unexpired portion of the term. Appointments to fill vacancies on the local board shall be made in the same manner and subject to the same conditions as the initial appointments to such board. The term of each member shall expire on the second Monday in July of the appropriate year. Members shall continue to serve until a successor is appointed.

Source:

Laws 1982, LB 714, § 5

Laws 1999, LB 240, § 3

~ Reissue Revised Statutes of Nebraska

Section 43-1306***State board; assign cases.***

The state board shall assign cases of children in foster care placement to a local board.

Source:

Laws 1982, LB 714, § 6

~ Reissue Revised Statutes of Nebraska

Section 43-1307***Child placed in foster care; court; duties.***

Each court which has placed a child in foster care shall send to the state board or designated local board (1) a copy of the plan or permanency plan, prepared by the person or court in charge of the child in accordance with section 43-1312, to effectuate rehabilitation of the foster child and family unit or permanent placement of the child and (2) a copy of the progress reports as they relate to the plan or permanency plan, including, but not limited to, the court order and the report and recommendations of the guardian ad litem.

Source:

Laws 1982, LB 714, § 7

Laws 1998, LB 1041, § 37

~ Reissue Revised Statutes of Nebraska

Section 43-1308***State or local board; powers and duties.***

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, the state board or designated local board shall:

(a) Review at least once every six months the case of each child in a foster care placement to determine what efforts have been made to carry out the plan or permanency plan for rehabilitation of the foster child and family unit or for permanent placement of such child pursuant to section 43-1312;

(b) Submit to the court having jurisdiction over such child for the purposes of foster care placement, within thirty days after the review, its findings and recommendations regarding the efforts and progress made to carry out the plan or permanency plan established pursuant to section 43-1312 together with any other recommendations it chooses to make regarding the child. The findings and recommendations shall include whether there is a need for continued out-of-home placement, whether the current placement is safe and appropriate, the specific reasons for the findings and recommendations, including factors, opinions, and rationale considered in its review, whether the grounds for termination of parental rights under section 43-292 appear to exist, and the date of the next review by the state board or designated local board;

(c) If the return of the child to his or her parents is not likely, recommend referral for adoption and termination of parental rights, guardianship, placement with a relative, or, as a last resort, another planned, permanent living arrangement; and

(d) Promote and encourage stability and continuity in foster care by discouraging unnecessary changes in the placement of foster children and by encouraging the recruitment of foster parents who may be eligible as adoptive parents.

(2) When the state board determines that the interests of a child in a foster care placement would be served thereby, the state board may request a review hearing as provided for in section 43-1313.

Source:

Laws 1982, LB 714, § 8

Laws 1985, LB 255, § 41

Laws 1990, LB 1222, § 7

Laws 1998, LB 1041, § 38

Cross References:

Nebraska Indian Child Welfare Act, see section 43-1501.

~ Reissue Revised Statutes of Nebraska

Section 43-1309***Records; release; when.***

Upon the request of the state board or the designated local board, any records pertaining to a case assigned to such board, or upon the request of the Department of Health and Human Services, any records pertaining to a case assigned to the department, shall be furnished to the requesting board or department by the agency charged with the child or any public official or employee of a political subdivision having relevant contact with the child. Upon the request of the state board or designated local board, and if such information is not obtainable elsewhere, the court having jurisdiction of the foster child shall release such information to the state board or designated local board as the court deems necessary to determine the physical, psychological, and sociological circumstances of such foster child.

Source:

Laws 1982, LB 714, § 9

Laws 1990, LB 1222, § 8

Laws 1996, LB 1044, § 197

~ Reissue Revised Statutes of Nebraska

Section 43-1310***Records and information; confidential; unauthorized disclosure; penalty.***

All records and information regarding foster children and their parents or relatives in the possession of the state board or local board shall be deemed confidential. Unauthorized disclosure of such confidential records and information or any violation of the rules and regulations of the Department of Health and Human Services or the state board shall be a Class III misdemeanor.

Source:

Laws 1982, LB 714, § 10

Laws 1990, LB 1222, § 9

Laws 1996, LB 1044, § 198

~ Reissue Revised Statutes of Nebraska

Section 43-1311***Child removed from home; person or court in charge of child; duties.***

Except as otherwise provided in the Nebraska Indian Child Welfare Act, immediately following removal of a child from his or her home pursuant to section 43-284, the person or court in charge of the child shall:

(1) Conduct or cause to be conducted an investigation of the child's circumstances designed to establish a safe and appropriate plan for the rehabilitation of the foster child and family unit or permanent placement of the child;

(2) Require that the child receive a medical examination within two weeks of his or her removal from his or her home; and

(3) Subject the child to such further diagnosis and evaluation as is necessary.

Source:

Laws 1982, LB 714, § 11

Laws 1985, LB 255, § 42

Laws 1998, LB 1041, § 39

Cross References:

Nebraska Indian Child Welfare Act, see section 43-1501.

Section 43-1312

Plan or permanency plan for foster child; contents; investigation; hearing.

(1) Following the investigation conducted pursuant to section 43-1311 and immediately following the initial placement of the child, the person or court in charge of the child shall cause to be established a safe and appropriate plan for the child. The plan shall contain at least the following:

(a) The purpose for which the child has been placed in foster care;

(b) The estimated length of time necessary to achieve the purposes of the foster care placement;

(c) A description of the services which are to be provided in order to accomplish the purposes of the foster care placement;

(d) The person or persons who are directly responsible for the implementation of such plan; and

(e) A complete record of the previous placements of the foster child.

(2) If the return of the child to his or her parents is not likely based upon facts developed as a result of the investigation, the Department of Health and Human Services shall recommend termination of parental rights and referral for adoption, guardianship, placement with a relative, or, as a last resort, another planned permanent living arrangement.

(3) Each child in foster care under the supervision of the state shall have a permanency hearing by a court, no later than twelve months after the date the child enters foster care and annually thereafter during the continuation of foster care. The court's order shall include a finding regarding the appropriateness of the permanency plan determined for the child and shall include whether, and if applicable when, the child will be:

(a) Returned to the parent;

(b) Referred to the state for filing of a petition for termination of parental rights;

(c) Placed for adoption;

(d) Referred for guardianship; or

(e) In cases where the state agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, (i) referred for termination of parental rights, (ii) placed for adoption with a fit and willing relative, or (iii) placed with a guardian.

Source:

Laws 1982, LB 714, § 12

Laws 1998, LB 1041, § 40

Annotations:

Under subsection (3) of this section, a permanency hearing considers the appropriateness of a plan for a child in foster care with respect to the plan's likelihood of providing, inter alia, a safe, stable, and nurturing environment. Pursuant to subsection (3) of this section, a permanency hearing must be conducted no later than twelve months after the child enters foster care. In re Interest of Sarah K., 258 Neb. 52, 601 N.W.2d 780 (1999).

~ Reissue Revised Statutes of Nebraska

Section 43-1313

Review of dispositional order; when; procedure.

When a child is in foster care, the court having jurisdiction over such child for the purposes of foster care placement shall review the dispositional order for such child at least once every six months. The court may reaffirm the order or direct other disposition of the child. Any review hearing by a court having jurisdiction over such child for purposes of foster care placement shall be conducted on the record as provided in sections 43-283 and 43-284, and any recommendations of the state board or a local board concerning such child shall be included in the record. The court shall review a case on the record more often than every six months and at any time following the original placement of the child if the state board requests a hearing in writing specifying the reasons for the review. Members of the state board or its designated representative may attend and be heard at any hearing conducted under this section and may participate through counsel at the hearing with the right to call and cross-examine witnesses and present arguments to the court.

Source:

Laws 1982, LB 714, § 13

Laws 1990, LB 1222, § 10

~ Reissue Revised Statutes of Nebraska

Section 43-1314***Review of dispositional order; right to participate; notice.***

Except as otherwise provided in the Nebraska Indian Child Welfare Act, notice of the court review and the right of participation in all court reviews pertaining to a child in a foster care placement shall be provided by the court having jurisdiction over such child for the purposes of foster care placement either in court, by mail, or in such other manner as the court may direct. Such notice shall be provided to: (1) The person charged with the care of such child; (2) the child's parents or guardian unless the parental rights of the parents have been terminated by court action as provided in section 43-292 or 43-297; (3) the foster child if age fourteen or over; (4) the foster parent or parents of the foster child; (5) the guardian ad litem of the foster child; and (6) the state board. Notice of the court review shall also be provided to the preadoptive parent or relative providing care for the child. Notice to the foster parent, preadoptive parent, or relative providing care shall not be construed to require that such foster parent, preadoptive parent, or relative be made a party to the review solely on the basis of such notice and opportunity to be heard.

Source:

Laws 1982, LB 714, § 14
Laws 1985, LB 255, § 43
Laws 1988, LB 948, § 1
Laws 1990, LB 1222, § 11
Laws 1998, LB 1041, § 41

Cross References:

Nebraska Indian Child Welfare Act, see section 43-1501.

Annotations:

A foster parent does not have an interest in the placement of an adjudicated child sufficient to warrant intervention in juvenile proceedings as a matter of right, but is entitled to notice and an opportunity to participate in all court reviews pertaining to a child in foster care placement. *In re Interest of Destiny S.*, 263 Neb. 255, 639 N.W.2d 400 (2002).

Under this section and section 43-285, foster parents have standing to participate in foster care placement review hearings. *In re Interest of Jorius G. & Cheralee G.*, 249 Neb. 892, 546 N.W.2d 796 (1996).

~ Reissue Revised Statutes of Nebraska

Section 43-1314.01***Six-month case reviews; state board; duties.***

(1) The State Foster Care Review Board shall be responsible for the conduct of periodic reviews which shall be identified as reviews which meet the federal requirements for six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. The state board shall be fiscally responsible for any noncompliance sanctions imposed by the federal government related

to the requirements for review outlined in the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. It is the intent of the Legislature that beginning October 1, 1996, the state board shall be the only state agency with the responsibility to conduct six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272.

(2) It is the intent of the Legislature that any six-month court review of a juvenile pursuant to sections 43-278 and 43-1313 shall be identified as a review which meets the federal requirements for six-month case reviews pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272.

(3) The state board may assist the Department of Health and Human Services as to eligibility under Title IV-E for state wards and eligibility for Supplemental Security Income, Supplemental Security Disability Income, Veterans Administration, or aid to families with dependent children benefits, for child support orders of the court, and for medical insurance other than medicaid.

Source:

Laws 1996, LB 642, § 1

Laws 1997, LB 307, § 76

Laws 1999, LB 240, § 4

~ Reissue Revised Statutes of Nebraska

Section 43-1315

Status and permanency plan review; placement order.

In reviewing the foster care status and permanency plan of a child and in determining its order for disposition, the court shall continue placement outside the home upon a written determination that return of the child to his or her home would be contrary to the welfare of such child and that reasonable efforts to preserve and reunify the family, if required under section 43-283.01, have been made. In making this determination, the court shall consider the goals of the foster care placement and the safety and appropriateness of the foster care plan or permanency plan established pursuant to section 43-1312.

Source:

Laws 1982, LB 714, § 15

Laws 1987, LB 635, § 4

Laws 1998, LB 1041, § 42

Annotations:

The Legislature intended that the issue of reasonable efforts required under section 43-283.01 must be reviewed by the juvenile court (1) when removing from the home a juvenile adjudged to be under subsections (3) or (4) of section 43-247 pursuant to section 43-284, (2) when the court continues a juvenile's out-of-home placement pending adjudication pursuant to section 43-254, (3) when the court reviews a juvenile's status and permanency planning pursuant to this section, and (4) when termination of parental

rights to a juvenile is sought by the State under subsection (6) of section 43-292. In re Interest of DeWayne G., Jr. & Devon G., 263 Neb. 43, 638 N.W.2d 510 (2002).

This section only applies to situations where the foster care status of a child is being reviewed, not all orders which are dispositional in nature. In re Interest of Gloria F., 254 Neb. 531, 577 N.W.2d 296 (1998).

~ Reissue Revised Statutes of Nebraska

Section 43-1316

Status review; child's needs; determination.

The court shall, when reviewing the foster care status of a child, determine whether the individual physical, psychological, and sociological needs of the child are being met. The health and safety of the child are of paramount concern in such review.

Source:

Laws 1982, LB 714, § 16

Laws 1998, LB 1041, § 43

~ Reissue Revised Statutes of Nebraska

Section 43-1317

Training for local board members.

The state board shall establish compulsory training for local board members which shall consist of initial training programs followed by periodic inservice training programs.

Source:

Laws 1982, LB 714, § 17

~ Reissue Revised Statutes of Nebraska

Section 43-1318

Act, how cited.

Sections 43-1301 to 43-1318 shall be known and may be cited as the Foster Care Review Act.

Source:

Laws 1982, LB 714, § 18

Laws 1996, LB 642, § 2

Laws 1998, LB 1041, § 44

~ Reissue Revised Statutes of Nebraska

Other Related Statutes**Section 43-1321*****Foster Care Review Board Cash Fund; created; use; investment.***

There is hereby created the Foster Care Review Board Cash Fund. The fund shall be administered by the State Foster Care Review Board. The board shall remit revenue from the following sources to the State Treasurer for credit to the fund:

(1) Registration and other fees received for training, seminars, or conferences fully or partially sponsored or hosted by the board;

(2) Payments to offset printing, postage, and other expenses for books, documents, or other materials printed or published by the board; and

(3) Money received by the board as gifts, grants, reimbursements, or appropriations from any source intended for the purposes of the fund.

The fund shall be used for the administration of the Foster Care Review Act.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source:

Laws 1994, LB 1194, § 9

Laws 1995, LB 7, § 38

Cross References:

Foster Care Review Act, see section 43-1318.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

~ Reissue Revised Statutes of Nebraska

Section 28-726***Information; access.***

Except as provided in this section and sections 28-722 and 28-734 to 28-739, no person, official, or agency shall have access to information in the tracking system of child protection cases maintained pursuant to section 28-715 or in records in the central register of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection Act. Such persons, officials, and agencies having access to such information shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected child abuse or neglect;

(2) A county attorney in preparation of a child abuse or neglect petition or termination of parental rights petition;

(3) A physician who has before him or her a child whom he or she reasonably suspects may be abused or neglected;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child or a parent, a guardian, or other person responsible for the abused or neglected child's welfare who is the subject of the report of child abuse or neglect;

(5) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report of child abuse or neglect shall be made available to the researcher or auditor;

(6) The State Foster Care Review Board when the information relates to a child in a foster care placement as defined in section 43-1301. The information provided to the state board shall not include the name or identity of any person making a report of suspected child abuse or neglect;

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, as the act existed on January 1, 2005, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;

(8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home child abuse or neglect; and

(9) For purposes of licensing providers of child care programs, the Department of Health and Human Services Regulation and Licensure.

Source:

Laws 1979, LB 505, § 14

Laws 1982, LB 522, § 9

Laws 1988, LB 463, § 47

Laws 1990, LB 1222, § 1

Laws 1992, LB 643, § 2

Laws 1994, LB 1035, § 7

Laws 1997, LB 119, § 4

Laws 2001, LB 214, § 2

Laws 2002, LB 642, § 8

Laws 2005, LB 116, § 18

Effective date September 4, 2005.

Section 43-285

Care of juvenile; authority of guardian; placement plan and report; when; standing; State Foster Care Review Board; participation authorized; immunity.

(1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it. Such guardianship shall not include the guardianship of any estate of the juvenile.

(2) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan. The department shall include in the plan for a juvenile who is sixteen years of age or older and subject to the guardianship of the department a written proposal describing programs and services designed to assist the juvenile in acquiring independent living skills. If any other party, including, but not limited to, the guardian ad litem, parents, county attorney, or custodian, proves by a preponderance of the evidence that the department's plan is not in the juvenile's best interests, the court shall disapprove the department's plan. The court may modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented. The department or any other party may request a review of the court's order concerning the plan by a juvenile review panel as provided in section 43-287.04.

(3) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or deemed appropriate by the department, association, or individual. The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause

shown. The department may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. The department or any other party may request a review of the change in placement by a juvenile review panel in the manner set out in section 43-287.04. The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

(4) The court shall also hold a permanency hearing if required under section 43-1312.

(5) When the court awards a juvenile to the care of the department, an association, or an individual, then the department, association, or individual shall have standing as a party to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with the Nebraska Juvenile Code.

(6) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the State Foster Care Review Board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section 43-1314.

(7) Any written findings or recommendations of the State Foster Care Review Board or any designated local foster care review board with regard to a juvenile in a foster care placement submitted to a court having jurisdiction over such juvenile shall be admissible in any proceeding concerning such juvenile if such findings or recommendations have been provided to all other parties of record.

(8) Any member of the State Foster Care Review Board, any of its agents or employees, or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

Source:

Laws 1981, LB 346, § 41
Laws 1982, LB 787, § 17
Laws 1984, LB 845, § 31
Laws 1985, LB 447, § 25
Laws 1989, LB 182, § 12
Laws 1990, LB 1222, § 3
Laws 1992, LB 1184, § 14
Laws 1993, LB 103, § 1
Laws 1996, LB 1044, § 133
Laws 1998, LB 1041, § 26

Cross References:

Foster Care Review Act, see section 43-1318.

Annotations:

Pursuant to subsection (3) of this section, when a separate juvenile court or county court sitting as a juvenile court awards custody of a minor to the Department of Health and Human Services, the court has authority to award custody to a family the department has designated as suitable guardians without resorting to a proceeding under section 30-2608. In re Guardianship of Rebecca B. et al., 260 Neb. 922, 621 N.W.2d 289 (2000).

The terms "care" and "custody" as used in this section are not synonymous. In re Interest of Jeremy T., 257 Neb. 736, 600 N.W.2d 747 (1999).

A dispositional order in which a juvenile court declines to order a rehabilitation plan for parents of a child adjudicated under section 43-247(3)(a) is a final, appealable order. A juvenile court is not required to order or implement a rehabilitation plan for the parent of a child adjudicated under section 43-247(3)(a) if the plan has very little chance of success and is not in the best interests of the child. Where a child's substantial medical needs resulting from injury caused by parental abuse necessitated 24-hour daily nursing care for the child, the juvenile court did not err in accepting recommendation of the Department of Health and Human Services that no rehabilitation plan be implemented to reunite a child with his or her parents. In re Interest of Tabatha R., 255 Neb. 818, 587 N.W.2d 109 (1998).

Because statutory provisions do not overcome constitutional rights, the provisions of subsection (6) of this section do not apply to proceedings brought under the Nebraska Juvenile Code to terminate parental rights. Despite subsection (6) of this section, the hearsay report of the State Foster Care Review Board is not necessarily admissible in a hearing on termination of parental rights. In re Interest of Constance G., 254 Neb. 96, 575 N.W.2d 133 (1998).

Pursuant to subsection (1) of this section, deciding whether to remove one from life support measures and whether to resuscitate one constitute medical services. In re Tabatha R., 252 Neb. 687, 564 N.W.2d 598 (1997).

Where a proceeding to obtain the juvenile court's assent to the medical services determined by the department under subsection (1) of this section results in the functional equivalent of a proceeding to terminate parental rights, the same due process must be afforded in the assent proceeding as is required in a proceeding to terminate parental rights. In re Interest of Tabatha R., 252 Neb. 687, 564 N.W.2d 598 (1997).

Where the department's determination under subsection (1) of this section is likely to result in the juvenile's death, the juvenile court's assent is the functional equivalent of a judgment terminating parental rights. In re Tabatha R., 252 Neb. 687, 564 N.W.2d 598 (1997).

Pursuant to subsection (4) of this section (now subsection (5) of this section), the Department of Social Services acquires standing as a party only after a juvenile has been placed in its care. In re Interest of Archie C., 250 Neb. 123, 547 N.W.2d 913 (1996).

Foster parents are interested parties for the purposes of this section. Foster parents have

standing to participate in foster care placement review hearings. In re Interest of Jorius G. & Cheralee G., 249 Neb. 892, 546 N.W.2d 796 (1996).

Standing alone, subsection (2) of this section appears to entitle the Department of Social Services to obtain an expedited review in any case; however, its reach is limited by the requirements set forth in sections 43-287.01 and 43-287.03, which require the application of a disjunctive test: First, the order must implement a different plan than that proposed by the department. Second, there must exist a belief in the department that the court-ordered plan is not in the best interests of the juvenile. Where this test is met, expedited review is the sole avenue of review available to the department. In re Interest of M.J.B., 242 Neb. 671, 496 N.W.2d 495 (1993).

When the Department of Social Services has custody of a child, the department retains authority similar to a guardian's authority. In re Interest of C.A., 235 Neb. 893, 457 N.W.2d 822 (1990).

The provision of this section which provides that the "Department of Social Services shall have the authority to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each child committed to it" by a juvenile court, does not contravene the distribution of powers clause contained in Neb. Const., art. II, sec. 1. In re Interest of G.B., M.B., and T.B., 227 Neb. 512, 418 N.W.2d 258 (1988).

This section provides standing for the Department of Social Services to file any pleading or motion or to seek review or relief, when the juvenile court orders a juvenile to the care of the department. In re Interest of C.G. and G.G.T., 221 Neb. 409, 377 N.W.2d 529 (1985).

When the court awards a juvenile to the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, association, or individual to whose care he or she is committed. In re Interest of Eric O. and Shane O., 9 Neb. App. 676, 617 N.W.2d 824 (2000).

Pursuant to subsection (3) of this section, although the language of this section appears to authorize an expedited review in any case, its reach is limited by the requirements set forth in sections 43-287.01 and 43-287.03. In re Interest of Tanisha P. et al., 9 Neb. App. 344, 611 N.W.2d 418 (2000).

This section gives the court the power to assent and, by implication, to dissent from the placement and other decisions of the Department of Health and Human Services, as well as of other entities to whom the court might commit the care of a minor. This section indicates the Legislature's intent to remove from the Department of Health and Human Services the complete control of a minor whose care is given to the department under the Nebraska Juvenile Code. In re Interest of Crystal T. et al., 7 Neb. App. 921, 586 N.W.2d 479 (1998).

A juvenile court may not delegate to the Department of Social Services or any other third

party the authority to determine the time, manner, and extent of parental visitation. In re Interest of Teela H., 3 Neb. App. 604, 529 N.W.2d 134 (1995).

~ Reissue Revised Statutes of Nebraska